

FILE COPY

**State Of Wisconsin
Before The Wisconsin Board Of Nursing**

In The Matter Of Disciplinary Proceedings Against

BEVERLY F. ORCUTT, L.P.N.,
Respondent.

FINAL DECISION AND ORDER

Case LS98091710 NUR

Division of Enforcement Case #95 NUR 118

The parties to this action for the purposes of Wis. Stats. §. 227.53 are:

Beverly F. Orcutt, L.P.N.
Apartment #6
625 Vera Court
Madison, WI 53704

Wisconsin Board of Nursing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The Wisconsin Board of Nursing received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Beverly F. Orcutt, L.P.N., personally, and by Claudia Berry Miran, attorney for the Department of Regulation and Licensing, Division of Enforcement. Based upon the Stipulation of the parties, the Wisconsin Board of Nursing makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Beverly F. Orcutt, L.P.N., was born April 16, 1940. Ms. Orcutt's latest address on file with the Department of Regulation and Licensing is Apartment #6, 625 Vera Court, Madison, WI 53704.
2. Ms. Orcutt is licensed to practice in the state of Wisconsin as a licensed practical nurse pursuant to license #11848, which was first granted on December 13, 1971.
3. On June 8, 1995, Ms. Orcutt was working as an LPN at RFDF Inc., a residential care facility for developmentally disabled adults. During the serving of breakfast, one of the patients (a 62-year-old mildly mentally retarded man with "behavior disturbance") entered the kitchen and quickly consumed a cup of coffee which belonged to Ms. Orcutt.

4. Ms. Orcutt approached the patient and, using a loud voice, reprimanded the patient for taking the coffee. In an action which she claims was inadvertent, Ms. Orcutt also slapped the hand of the patient. Ms. Orcutt was discharged for violating RFDF work rules prohibiting striking or intimidating patients.

CONCLUSIONS OF LAW

1. The Board of Nursing has jurisdiction in this matter pursuant to §§ 441.07 (1) and 441.10, Stats., and Wis. Adm. Code chapter N 7.
2. The Board of Nursing has the authority to resolve this disciplinary proceeding by Stipulation without an evidentiary hearing pursuant to § 227.44 (5), Stats.
3. Ms. Orcutt's actions in raising her voice to the patient and in slapping the patient's hand constitute unprofessional conduct under Wis. Adm. Code § N 7.04 (4).

ORDER

NOW, THEREFORE, IT IS ORDERED that the stipulation of the parties is approved.

IT IS FURTHER ORDERED that in resolution of this matter, the Wisconsin Board of Nursing accepts the voluntary surrender of the license of Beverly F. Orcutt, L.P.N., to practice as a licensed practical nurse in the State of Wisconsin.

IT IS FURTHER ORDERED that Ms. Orcutt shall not practice as a licensed practical nurse in the State of Wisconsin when not currently licensed.

IT IS FURTHER ORDERED that Ms. Orcutt shall not reapply for licensure to practice as a licensed practical nurse in the State of Wisconsin.

The rights of a party aggrieved by this Final Decision and Order to petition the Wisconsin Board of Nursing for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

This Order shall become effective on the date of its signing.

By: 
A Member of the Board

17 SEP 98
Date

cbm

**State Of Wisconsin
Before The Wisconsin Board of Nursing**

In The Matter Of Disciplinary Proceedings Against

BEVERLY F. ORCUTT, L.P.N.,
Respondent.

STIPULATION

Case LS98091710NUR

Division of Enforcement Case #95 NUR 118

It is hereby stipulated between Beverly F. Orcutt, L.P.N., personally on her own behalf, and Claudia Berry Miran, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. Beverly F. Orcutt, L.P.N., was born April 16, 1940. Ms. Orcutt's latest address on file with the Department of Regulation and Licensing is Apartment #6, 625 Vera Court, Madison, WI 53704.
2. Ms. Orcutt is licensed to practice in the state of Wisconsin as a licensed practical nurse pursuant to license #11848, which was first granted on December 13, 1971.
3. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement into Ms. Orcutt's license.
4. Ms. Orcutt consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
5. Ms. Orcutt is aware of and understands each of her rights, including:
 - The right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence;
 - The right to confront and cross-examine the witnesses against her;
 - The right to call witnesses on her behalf and to compel their attendance by subpoena;
 - The right to testify herself;
 - The right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
 - The right to petition for rehearing;
 - The right to be represented at every stage of the proceeding, including the making of any stipulation by an attorney of her own choosing, at her own expense; and
 - All other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

6. Ms. Orcutt understands that by signing this stipulation she voluntarily and knowingly waives the rights enumerated in paragraph 3 above, is aware of her right to seek legal representation, and does voluntarily and knowingly waive those rights.
7. The parties to the Stipulation waive all costs of the proceeding.
8. The parties to the Stipulation and the Case Advisor, Marilyn Panka, L.P.N., may appear before the Board for the purpose of speaking in favor of this agreement and answering questions that the members of the Board may have in connection with their deliberation on the Stipulation. Any appearance by any party pursuant to this paragraph shall be preceded by proper and timely notice to all parties to this proceeding.
9. This Stipulation is subject to approval by the Case Advisor and acceptance by the Wisconsin Board of Nursing. If any term of this stipulation is not approved by the Case Advisor and accepted by the Board, then no term of this Stipulation or the Final Decision and Order will be binding in any manner on any party, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

Beverly F. Orcutt
Beverly F. Orcutt, L.P.N.

8-14-98
Date

Claudia Berry Miran
Claudia Berry Miran
Attorney
Division of Enforcement

8/17/98
Date

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE BOARD OF NURSING

In the Matter of Disciplinary Proceedings Against

Beverly F. Orcutt, L.P.N.,

AFFIDAVIT OF MAILING

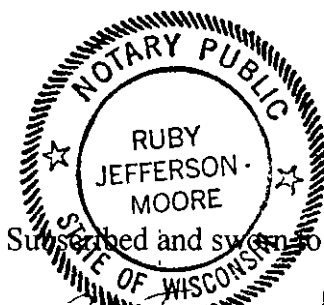
Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On September 21, 1998, I served the Final Decision and Order dated September 17, 1998, LS98091710NUR, upon the Respondent Beverly F. Orcutt, L.P.N. by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is Z 233 819 804.
3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address and is:

Beverly F. Orcutt, L.P.N.
625 Vera Court, Apt. 6
Madison WI 53704



Subscribed and sworn to before me
this 21st day of September 1998.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin
My commission is permanent.

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

NOTICE OF RIGHTS OF APPEAL

TO: BEVERLY F ORCUTT LPN

You have been issued an Order. For purposes of service the date of mailing of this Order is 9/21/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN BOARD OF NURSING

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935